

TIMOTHY P. JOHNSON (BAR No. 66333)
LAW OFFICES OF TIMOTHY P. JOHNSON
17821 E. 17TH STREET, SUITE 290
TUSTIN, CALIFORNIA 92780
TELEPHONE: (714) 832-1170
FACSIMILE: (714) 832-1179
E-MAIL: tjohnson@johnson-chambers.com

Attorneys for Defendants BRONSON & MIGLIACCIO, LLP; DAVID V. WEINER and CACH, LLC

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

JOSIE BONILLA, an individual,

Case No. 08 CV 1175 JM POR

Plaintiff,

vs.

**ANSWER TO DEFENDANT CACH, LLC TO
PLAINTIFF'S COMPLAINT**

BRONSON & MIGLIACCIO, LLP, an entity
of unknown form; CACH, LLC, an entity of
unknown form; DAVID V. WEINER, an
individual; and DOES 1-10, inclusive,

Defendants.

Defendant, CACH, LLC for itself and for no other defendants, answer as follows:

INTRODUCTION

1. Answering paragraph 1 of the Complaint, defendant is without knowledge or information to form a belief as to the truth of the allegation contained therein, and on that basis denies each and every allegation therein.

JURISDICTION

2. Answering paragraph 2 of the Complaint, defendant is without knowledge or information to form a belief as to the truth of the allegation contained therein, and on that basis denies each and every allegation therein.

///

///

PARTIES

3. Answering paragraph 3 of the Complaint, defendant is without knowledge or information to form a belief as to the truth of the allegation contained therein, and on that basis denies each and every allegation therein.

4. Answering paragraph 4 of the Complaint, defendant is without knowledge or information to form a belief as to the truth of the allegation contained therein, and on that basis denies each and every allegation therein.

5. Answering paragraph 5 of the Complaint, defendant is without knowledge or information to form a belief as to the truth of the allegation contained therein, and on that basis denies each and every allegation therein.

6. Answering paragraph 6 of the Complaint, defendant is without knowledge or information to form a belief as to the truth of the allegation contained therein, and on that basis denies each and every allegation therein.

7. Answering paragraph 7 of the Complaint, defendant is without knowledge or information to form a belief as to the truth of the allegation contained therein, and on that basis denies each and every allegation therein.

8. Answering paragraph 8 of the Complaint, defendant is without knowledge or information to form a belief as to the truth of the allegation contained therein, and on that basis denies each and every allegation therein.

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

9. Answering paragraph 9 of the Complaint, defendant is without knowledge or information to form a belief as to the truth of the allegation contained therein, and on that basis denies each and every allegation therein.

10. Answering paragraph 10 of the complaint, defendant is without knowledge or information to form a belief as to the truth of the allegation contained therein, and on that basis denies each and every allegation therein.

11. Answering paragraph 11 of the complaint, defendant is without knowledge or information to form a belief as to the truth of the allegation contained therein, and on that basis

1 denies each and every allegation therein.

2 12. Answering paragraph 12 of the Complaint, defendant is without knowledge or
3 information to form a belief as to the truth of the allegation contained therein, and on that basis
4 denies each and every allegation therein.

5 13. Answering paragraph 13 of the complaint, defendant is without knowledge or
6 information to form a belief as to the truth of the allegation contained therein, and on that basis
7 denies each and every allegation therein.

8 14. Answering paragraph 14 of the complaint, defendant is without knowledge or
9 information to form a belief as to the truth of the allegation contained therein, and on that basis
10 denies each and every allegation therein.

11 15. Answering paragraph 15 of the Complaint, defendant is without knowledge or
12 information to form a belief as to the truth of the allegation contained therein, and on that basis
13 denies each and every allegation therein.

14 16. Answering paragraph 16 of the Complaint, defendant is without knowledge or
15 information to form a belief as to the truth of the allegation contained therein, and on that basis
16 denies each and every allegation therein.

17 **FIRST CAUSE OF ACTION**

18 **VIOLATIONS OF THE FAIR DEB COLLECTION PRACTICES ACT**

19 **(As to All Defendants)**

20 **(15 U.S.C. §§1692 et seq.)**

21 17. Answering paragraph 17 of the Complaint, defendant is without knowledge or
22 information to form a belief as to the truth of the allegation contained therein, and on that basis
23 denies each and every allegation therein.

24 19. Answering paragraph 18 of the Complaint, defendant denies the allegations
25 contained therein.

26 20. Answering paragraph 19 of the Complaint, defendant denies the allegations
27 contained therein.

28 ///

SECOND CAUSE OF ACTION

VIOLATIONS OF THE ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT

(As to Defendant CACH ONLY)

(Cal.Civ. Code §§1788 et seq.)

21. Answering paragraph 21 of the Complaint, defendant is without knowledge or information to form a belief as to the truth of the allegation contained therein, and on that basis denies each and every allegation therein.

22. Answering paragraph 22 of the Complaint, defendant is without knowledge or information to form a belief as to the truth of the allegation contained therein, and on that basis denies each and every allegation therein.

23. Answering paragraph 23 of the Complaint, defendant is without knowledge or information to form a belief as to the truth of the allegation contained therein, and on that basis denies each and every allegation therein.

FIRST AFFIRMATIVE DEFENSE

(Failure to State Cause of Action)

The complaint and each cause of action contained therein fails to state facts sufficient to constitute causes of action as to these answering defendants.

SECOND AFFIRMATIVE DEFENSE

(Statute of Limitations)

The complaint and each cause of action contained therein is barred by the applicable statute of limitations.

THIRD AFFIRMATIVE DEFENSE

(Failure to Mitigate)

At all times material herein, plaintiff failed and neglected to mitigate her damages, so as to reduce and/or diminish her claim.

FOURTH AFFIRMATIVE DEFENSE

(Laches)

These answering defendant is informed and believe and on such basis allege that

1 plaintiff is guilty of laches and that each and every cause of action within the complaint should fail
2 because plaintiff has inexcusably and unreasonably delayed the commencement of her action
3 against these defendants and is estopped from asserting her actions as a result thereof.

4 **FIFTH AFFIRMATIVE DEFENSE**

5 (Estoppel)

6 These answering defendant is informed and believe that the complaint and each and
7 every cause of action contained therein fails because of these answering defendants' reasonable
8 reliance on the acts or omissions of plaintiff, whereby the plaintiff is now estopped from asserting
9 the claims in her complaint against these answering defendants.

10 **SIXTH AFFIRMATIVE DEFENSE**

11 (Unclean Hands)

12 Plaintiff's claims against these answering defendant is expressly barred as a result of
13 plaintiff's unclean hands.

14 **SEVENTH AFFIRMATIVE DEFENSE**

15 (Comparative Fault of Third Parties)

16 If plaintiff suffered or sustained any damage or injury, either as alleged in the
17 complaint, or at all, the same was directly and proximately contributed to by the negligence,
18 recklessness, carelessness, fault, and unlawful conduct of other parties or entities, whether or not
19 parties to this action, and damages of plaintiff, if any, shall be reduced in proportion to the amount
20 of negligence and/or fault attributable to such other persons or entities, whether or not parties to this
21 action.

22 **EIGHTH AFFIRMATIVE DEFENSE**

23 (Comparative Fault)

24 If plaintiff suffered or sustained any damage or injury, either as alleged in the
25 complaint or at all, the same was directly and proximately contributed to by the negligence,
26 recklessness, carelessness, fault and unlawful conduct of plaintiff, and damages of plaintiff, if any,
27 shall be reduced in proportion to the amount of negligence and/or fault attributable to plaintiff.

28 ///

NINTH AFFIRMATIVE DEFENSE

Any violations of law, if any occurred, resulted from a bona fide error despite the maintenance of procedures reasonably adopted to avoid any such error.

TENTH AFFIRMATIVE DEFENSE

These answering defendant is informed and believe that the complaint and each and every cause of action contained therein fails because plaintiff has waived her claims against these answering defendants.

WHEREFORE, these answering defendants pray for judgment as follows:

1. Plaintiff take nothing by reason of the complaint;
2. These answering defendants be dismissed with prejudice;
3. For costs of suit incurred herein;
4. For reasonable attorney's fees incurred herein; and
5. For such other relief as the Court deems just and proper.

Dated: August 29, 2008

LAW OFFICES OF TIMOTHY P. JOHNSON

By: /S/ Timothy P. Johnson
TIMOTHY P. JOHNSON
Attorneys for Defendants BRONSON &
MIGLIACCIO, LLP; DAVID V. WEINER and
CACH, LLC

Tpj:cww/bonilla/pleadings/003

PROOF OF SERVICE BY MAIL

C.C.P. §1013(a), C.R.C. 2003(3), 2005(I)

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 17821 E. 17th Street, Suite 290, Tustin, California 92780.

On August 29, 2008, I served the foregoing document described as **ANSWER TO DEFENDANT CACH, LLC TO PLAINTIFF'S COMPLAINT** on all interested parties in this action by:

☒ placing ☐ the original ☒ a true copy thereof enclosed in sealed envelopes addressed as stated on the attached mailing list.

☒ **BY MAIL:** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U. S. Postal Service on the same day with postage thereon fully prepaid at Tustin, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ **BY PERSONAL SERVICE:** I caused such envelope to be delivered by hand to the offices of the addressee.

☐ **BY FACSIMILE TRANSMISSION:** From Fax No. (714) 832-1179 to the facsimile numbers listed on the attached mailing list. The facsimile machine I used complied with Rule 2003(3), and no error was reported by the machine.

☐ **BY OVERNIGHT DELIVERY:** I enclosed said document(s) in an envelope or package provided by the overnight service carrier and addressed to the persons at the addresses listed in the Service List. I placed the envelope or package for collection and overnight delivery at an office or regularly utilized drop box of the overnight service carrier or delivered such document(s) to a courier or driver authorized by the overnight service carrier to receive documents.

☒ **STATE:** I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

☐ **FEDERAL:** I declare that I am employed in the office of a member of the Bar of this Court, at whose direction the service was made.

EXECUTED on August 29, 2008 at Tustin, California.

/S/ Carol W. Wiese
CAROL W. WIESE

Bonilla v. Bronson & Migliaccio, LLP, et al.
USDC, Case No. 08 CV 1175 JM POR

MAILING LIST

Deborah L. Raymond, Esq. (Bar No. 173528) Attorney for Plaintiff JOSIE BONILLA
LAW OFFICES OF DEBORAH L. RAYMOND
445 Marine View Avenue, Suite 305
Del Mar, CA 92075
(858) 481-9559

LAW OFFICES OF TIMOTHY P. JOHNSON

LAW OFFICES OF TIMOTHY P. JOHNSON

TIMOTHY P. JOHNSON (BAR No. 66333)
LAW OFFICES OF TIMOTHY P. JOHNSON
17821 E. 17TH STREET, SUITE 290
TUSTIN, CALIFORNIA 92780
TELEPHONE: (714) 832-1170
FACSIMILE: (714) 832-1179
E-MAIL: tjohnson@johnson-chambers.com

Attorneys for Defendants BRONSON & MIGLIACCIO, LLP and DAVID V. WEINER

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

JOSIE BONILLA, an individual,

Plaintiff,

vs.

BRONSON & MIGLIACCIO, LLP, an entity
of unknown form; CACH, LLC, an entity of
unknown form; DAVID V. WEINER, an
individual; and DOES 1-10, inclusive,

Defendants.

Case No. 08 CV 1175 JM POR

**CERTIFICATE OF INTERESTED PARTIES
BY DEFENDANT CACH, LLC**

Pursuant to Federal Rule of Civil Procedure 7.1 and Civil L.R. 3-16, the undersigned certifies that the following listed persons, associations or persons, firms, partnerships, corporations (including parent corporations) or other entities (i) have a financial interest in the subject matter in controversy or in a party to the proceeding, or (ii) have a non-financial interest in that subject matter or I a party that could be substantially affected by the outcome of this proceeding:

NONE.

Dated: August 29, 2008

LAW OFFICES OF TIMOTHY P. JOHNSON

By: /s/ Timothy P. Johnson
TIMOTHY P. JOHNSON
Attorneys for Defendant CACH, LLC